

530 New

**PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

Name Guerrero James A  
(Last) (First) (Initial)

Prisoner Number J-57096

Institutional Address CSP- Solano, P.O. Box# 4000

**FILED**

**AUG 12 2008**

**RICHARD W. WIEKING**  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

James A. Guerrero  
(Enter the full name of plaintiff in this action.)

vs.

**CV**

**08**

**3859**

Case No. \_\_\_\_\_  
(To be provided by the clerk of court)

**PETITION FOR A WRIT  
OF HABEAS CORPUS**

**RMW**

**(PR)**

D.K. Sisto(Warden) et al.  
(Enter the full name of respondent(s) or jailor in this action)

**E-filing**

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

PET. FOR WRIT OF HAB. CORPUS

008-3859 RMW

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or  
 3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which  
 4 you are imprisoned or by whom you were convicted and sentenced. These are not proper  
 5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief  
 7 but may be subject to such custody in the future (e.g., detainees), you must name the person in whose  
 8 custody you are now and the Attorney General of the state in which the judgment you seek to attack  
 9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda  
 13 County Superior Court, Oakland):

14 San Joaquin \_\_\_\_\_ San Joaquin County \_\_\_\_\_  
 15 Court Location

16 (b) Case number, if known TF032996A

17 (c) Date and terms of sentence \_\_\_\_\_

18 (d) Are you now in custody serving this term? (Custody means being in jail, on  
 19 parole or probation, etc.) Yes X No \_\_\_\_\_

20 Where?

21 Name of Institution: CSP-Solano-P.O. Box# 4000

22 Address: Vacaville, Calif. 95696

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for  
 24 more than one crime, list each crime separately using Penal Code numbers if known. If you are  
 25 challenging more than one sentence, you should file a different petition for each sentence.)  
 26 Possession of a Fictitious Bill(Penal Code sec.476);Assault(Penal Code  
 27 sec. 245,subd.(a)(i)); False Information to a peace officer(Penal Code  
 28 sec.148.9)

3. Did you have any of the following?

Arraignment:

Yes ☒ No ☐

Preliminary Hearing:

Yes ☒ No ☐

Motion to Suppress:

Yes ☐ No ☐

4. How did you plead?

Guilty ☐ Not Guilty ☒ Nolo Contendere ☐

Any other plea (specify) \_\_\_\_\_

5. If you went to trial, what kind of trial did you have?

Jury ☒ Judge alone ☐ Judge alone on a transcript ☐

6. Did you testify at your trial?

Yes ☐ No ☐

7. Did you have an attorney at the following proceedings:

(a) Arraignment

Yes ☒ No ☐

(b) Preliminary hearing

Yes ☒ No ☐

(c) Time of plea

Yes ☐ No ☐

(d) Trial

Yes ☒ No ☐

(e) Sentencing

Yes ☒ No ☐

(f) Appeal

Yes ☒ No ☐

(g) Other post-conviction proceeding

Yes ☐ No ☒

8. Did you appeal your conviction?

Yes ☐ No ☐

(a) If you did, to what court(s) did you appeal?

Court of Appeal

Yes ☒ No ☐

Year: 2008

Result: Affirmed

Supreme Court of California

Yes ☒ No ☐

Year: 2008

Result: Denied

Any other court

Yes ☐ No ☐

Year: \_\_\_\_\_

Result: \_\_\_\_\_

(b) If you appealed, were the grounds the same as those that you are raising in this

petition? Yes X No       

(c) Was there an opinion? Yes        No       

(d) Did you seek permission to file a late appeal under Rule 31(a)?  
Yes        No X

If you did, give the name of the court and the result:

\_\_\_\_\_  
\_\_\_\_\_

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes        No X

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: California Supreme Court

Type of Proceeding: Petition For Review

Grounds raised (Be brief but specific):

a. Discovery Concerning Criminal History

b. D.A. Failed To Produce Exculpatory Evidence

c. Trial Court Erred In It's Instructing The Jury

d. \_\_\_\_\_

Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

II. Name of Court: \_\_\_\_\_

Type of Proceeding: \_\_\_\_\_

Grounds raised (Be brief but specific):

1 a. \_\_\_\_\_  
2 b. \_\_\_\_\_  
3 c. \_\_\_\_\_  
4 d. \_\_\_\_\_  
5 Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

6 III. Name of Court: \_\_\_\_\_  
7 Type of Proceeding: \_\_\_\_\_  
8 Grounds raised (Be brief but specific):  
9 a. \_\_\_\_\_  
10 b. \_\_\_\_\_  
11 c. \_\_\_\_\_  
12 d. \_\_\_\_\_  
13 Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

14 IV. Name of Court: \_\_\_\_\_  
15 Type of Proceeding: \_\_\_\_\_  
16 Grounds raised (Be brief but specific):  
17 a. \_\_\_\_\_  
18 b. \_\_\_\_\_  
19 c. \_\_\_\_\_  
20 d. \_\_\_\_\_  
21 Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?  
23 Yes \_\_\_\_\_ No X

24 Name and location of court: \_\_\_\_\_

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to  
27 support each claim. For example, what legal right or privilege were you denied? What happened?  
28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent  
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,  
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: Reversible Error Pursuant to Brady v. Maryland By D.A. Fail-  
6 ure To Turn Over Discovery Concerning Marc Turnovsky Criminal History

7 Supporting Facts: Marc Turnovsky was on the defense witness list, and his  
8 "rap" sheet was exculpatory evidence, in that he had been convicted  
9 befor and had a criminal history for counterfeiting

10  
11 Claim Two: D.A. Failed To Produce Exculpatory Evidence That Supported  
12 Petitioner In-Sanity Defense

13 Supporting Facts: Petitioner methamphetamine abuse caused him to be  
14 legally in-sane, Because it exacerbated his mental illness.

15  
16  
17 Claim Three: The Trial Court Erred In It's Instructing The Jury That  
18 Hands And Feet Could Be Construed As Dangerous or Deadly Weapons.

19 Supporting Facts: Under California law, hands and feet does not constitute  
20 deadly weapons, and to give such jury instruction was prejudicial  
21 to the defendant, for a fair trial

22  
23 If any of these grounds was not previously presented to any other court, state briefly which  
24 grounds were not presented and why: N/A

List, by name and citation only, any cases that you think are close factually to yours so that they are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning of these cases:

Brady v. Maryland, (1963) 373 U.S. 83; Kyles v. Whitley (1995) 514 U.S.  
419; Crane v. Kentucky, 476 U.S. 683; People v. Aguilar, 68 Cal.Rptr. 2d  
655

Do you have an attorney for this petition? Yes \_\_\_\_\_ No X

If you do, give the name and address of your attorney:

WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

Executed on 5-30-08  
 Date

James Guerrero  
 Signature of Petitioner

(Rev. 6/02)



LEGAL MAIL

CALIFORNIA STATE PRISON SOLANO

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James A. Guerrero  
J57096  
CSP Solano  
P.O. Box #4000  
Vacaville, CA 95696

AUG 7

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RECEIVED  
AUG 11 2008  
RICHARD W. WIEKING  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

United States District Court  
Northern District  
450 Golden Gate Avenue  
San Francisco, CA

94102-3483

Paul





*to LUZADIS 8/5/08*

CALIFORNIA STATE PRISON-SOLANO

LEGAL MAIL

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